

SOUTH AUSTRALIA

LAND ACQUISITION ACT 1969

*This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at **10 April 1997**.*

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY

LAND ACQUISITION ACT 1969

being

Land Acquisition Act 1969 No. 93 of 1969
[Assented to 11 December 1969]¹

as amended by

Land Acquisition Act Amendment Act 1972 No. 126 of 1972 [Assented to 30 November 1972]²

Land Acquisition Act Amendment Act 1990 No. 71 of 1990 [Assented to 20 December 1990]³

Land Acquisition (Native Title) Amendment Act 1994 No. 87 of 1994 [Assented to 15 December 1994]⁴

Land Acquisition (Right of Review) Amendment Act 1997 No. 5 of 1997 [Assented to 20 March 1997]⁵

¹ Came into operation 28 May 1970: *Gaz.* 28 May 1970, p. 1954.

² Came into operation 8 February 1973: *Gaz.* 8 February 1973, p. 439.

³ Came into operation 1 July 1991: *Gaz.* 20 June 1991, p. 1918.

⁴ Came into operation 9 May 1996: *Gaz.* 9 May 1996, p. 2440.

⁵ **Came into operation 10 April 1997: *Gaz.* 10 April 1997, p. 1456.**

NOTE:

- *Asterisks indicate repeal or deletion of text.*
- *Entries appearing in bold type indicate the amendments incorporated since the last reprint.*
- *For the legislative history of the Act see Appendix.*

An Act about the acquisition of land.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Land Acquisition Act 1969*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Object of this Act

3. The object of this Act is to provide for the acquisition of land on just terms.

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Interpretation

6. (1) In this Act, unless the contrary intention appears—

"**Authority**" means the person authorised by the special Act to acquire land;

"**claimant**" means a person who has a claim for compensation under this Act;

"**compensation**" means compensation to which a person is entitled under this Act, and includes the purchase price of land purchased by agreement;

"**Court**" means the Land and Valuation Court;

"**ERD Court**" means the *Environment, Resources and Development Court* constituted under the *Environment, Resources and Development Court Act 1993*;

"**interest**" in land means—

- (a) a legal or equitable estate or interest in the land; or
- (b) an easement, right, power, or privilege in, under, over, affecting, or in connection with, the land; or
- (c) native title in the land;

"**interested**" in relation to land, means having an interest in the land;

"**land**" includes an interest in land;

"**native title**", "**native title holder**" and "**native title land**"—see *Native Title (South Australia) Act 1994*;

"**Registrar**" means—

- (a) for all interests in land except native title—the Registrar-General;
- (b) for native title—the Registrar of the ERD Court;

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"**registered representative**" of native title holders—see *Native Title (South Australia) Act 1994*;

"**special Act**" means the Act authorising the compulsory acquisition of land;

"**subject land**" means land acquired or subject to acquisition under this Act.

(2) An explanatory note to a provision of this Act forms part of the provision to which it relates.

Application

7. (1) This Act applies to and in relation to every acquisition of land authorised by a special Act.

(1a) A special Act that authorises the compulsory acquisition of land will be taken to authorise the acquisition of land as defined by this Act.

(2) This Act is (except to the extent to which any Act may declare that a provision of this Act is inapplicable to the acquisition of land under that Act) hereby incorporated with every special Act authorising the acquisition of land, and shall be read with any such Act as one Act.

Real Property Act does not derogate from application of Act

8. The provisions of this Act apply notwithstanding the provisions of the *Real Property Act 1886-1969*.

Act does not apply to resumption of land

9. This Act does not apply to, or in relation to, the resumption of land pursuant to any provision of the *Crown Lands Act 1929-1968* or the *Pastoral Act 1936-1968*.

**PART 2
PROPOSAL TO ACQUIRE LAND**

Notice of intention to acquire land

10. (1) If the Authority proposes to acquire land (other than native title), the Authority must give a notice of intention to acquire the land to each person who has an interest in the land, or such of those persons as, after diligent inquiry, become known to the Authority.

(2) If the Authority proposes to acquire native title in land, the Authority must—

(a) if there is a registered representative of native title holders—give notice of intention to acquire the land to the registered representative and the relevant representative Aboriginal body; or

(b) if there is no registered representative of the native title holders—give notice of intention to acquire the land to all persons who hold, or may hold, native title in the land,¹ and give a copy of the notice to the Registrar of the ERD Court.

(3) The notice of intention to acquire the land must define the subject land with reasonable particularity.

(4) If the Authority changes the boundaries of the land it proposes to acquire in any respect, the Authority must immediately serve a notice of amendment to the notice of intention to acquire the land on the same persons and in the same way as the notice of intention to acquire.

(5) A notice of intention to acquire land does not bind the Authority to acquire the subject land.

¹ For method of service see Part 5 *Native Title (South Australia) Act 1994*.

Explanation of acquisition scheme may be required

11. (1) A person who has an interest in the subject land may, within 30 days after notice of intention to acquire the land is given, require the Authority, by written notice—

(a) to give an explanation of the reasons for acquisition of the land; and

(b) to provide reasonable details of any statutory scheme in accordance with which the land is to be acquired.

(2) For the purposes of this section—

(a) the registered representative of claimants to, or holders of, native title in land is taken to have an interest in that land; and

(b) the relevant representative Aboriginal body is taken to have an interest in native title land.

(3) The Authority may furnish the explanation and details by letter, or by making available models, plans, specifications or other relevant materials relating to the statutory land acquisition scheme.

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Right to object

12. (1) A person who has an interest in the subject land may within 30 days after notice of intention to acquire the land is given or, if an explanation of the reasons for the acquisition is required, within 30 days after the explanation was provided, by written notice—

- (a) request the Authority not to proceed with the acquisition of the subject land; or
- (b) request an alteration in the boundaries of the subject land; or
- (c) request that a particular part of the subject land be not acquired, or that further land be acquired.

(2) For the purposes of this section—

- (a) the registered representative of claimants to, or holders of, native title in land is taken to have an interest in that land; and
- (b) the relevant representative Aboriginal body is taken to have an interest in native title land.

(3) A request may be made under subsection (1)—

(aa) on the ground that acquisition of the land or a particular part of the land is not necessary for the purposes of carrying out the undertaking to which the acquisition relates; or

(a) on the ground that acquisition of the land or carrying out the purposes for which the acquisition is proposed would—

- (i) seriously impair an area of scenic beauty; or
- (ii) destroy, damage or interfere with an Aboriginal site within the meaning of the *Aboriginal Heritage Act 1988*; or
- (iii) destroy or impair a site of architectural, historic or scientific interest; or
- (iv) prejudice the conservation of flora or fauna that should be conserved in the public interest; or
- (v) prejudice some other public interest; or

(b) on some other ground stated in the request.

(4) The Authority must consider any request made to it under this section and must, within 14 days after receipt of the request, serve notice in writing on the person by whom the request was made, indicating whether it accedes to, or refuses, the request.

Right of review

12A. (1) A person who makes a request under section 12 in relation to a proposed acquisition may, within 7 days of being served with a notice indicating that the Authority has refused the request, or within such longer period as the Minister may in his or her absolute discretion allow in any particular case, apply in writing to the Minister for a review of the decision.

(2) An application for review must be made in a manner and form determined by the Minister.

(3) On receiving an application under this section the Minister will conduct the review or will appoint a suitable person to conduct the review on the Minister's behalf.

(4) The merits or otherwise of the undertaking to which the proposed acquisition relates cannot be called into question in a review under this section.

(5) The person conducting a review under this section may conduct the review in such manner as he or she thinks fit, including the holding of public hearings if he or she thinks appropriate.

(6) If the Minister conducts the review, it must be completed within 14 days of the Minister's receipt of the application.

(7) If the review is conducted by a person on the Minister's behalf, the review must be completed, and the reviewer's report furnished to the Minister, within 14 days of his or her appointment.

(8) On completion of a review, the Minister may confirm, vary or reverse the decision the subject of the review.

(9) A decision made on a review, or the manner in which a review is conducted, is not itself subject to review by a court or tribunal.

(10) In this section—

"**Minister**" means the Minister responsible for the administration of the Act under which the Authority in question is empowered to make the proposed acquisition.

Notice of fact that land is subject to acquisition must be given

13. (1) This section applies only in respect of land that has not been brought under the provisions of the *Real Property Act 1886-1969*.

(2) Where a notice of intention to acquire land has been served upon any person, that person shall not enter into any transaction in respect of the subject land without first disclosing the fact that the notice of intention to acquire the land has been served upon him.

(3) If any contract or agreement in relation to the land is entered into without disclosure as required by subsection (2) of this section, the contract or agreement shall be voidable at the option of the person to whom disclosure should have been made.

(4) The Authority may lodge a copy of a notice of intention to acquire land at the General Registry Office and may, by instrument in writing served upon any person, require him to deliver up to the Registrar any instrument evidencing his interest in the subject land.

(5) If a person upon whom a notice has been served under subsection (4) of this section, fails, without reasonable excuse, to deliver up within the time specified in the notice, any instrument that he is required by the notice to deliver up to the Registrar, he shall be guilty of an offence and liable to a penalty, not exceeding one hundred dollars, and whether or not he is convicted of an offence under this subsection, he shall not be entitled to receive any compensation until the instrument has been delivered up to the Registrar.

Notice where land is under the Real Property Act

14. (1) This section applies only in respect of land that has been brought under the provisions of the *Real Property Act 1886-1969*.

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(2) The Authority shall cause a copy of each notice of intention to acquire land to be served upon the Registrar who shall thereupon enter a caveat upon the title to the subject land forbidding all dealings with the land without the consent in writing of the Authority.

(3) The Authority shall, where it has determined not to proceed with the acquisition of land, or is presumed so to have determined under the provisions of this Act, forthwith make written application to the Registrar for withdrawal of a caveat entered pursuant to this section and the Registrar shall withdraw the caveat accordingly.

**PART 3
ACQUISITION OF LAND**

Acquisition by agreement, etc.

15. (1) The Authority may, at any time after the service of a notice of intention to acquire land, and before the publication of a notice of acquisition in respect of the land, acquire the subject land by agreement.

(2) Notwithstanding the fact that a notice of intention to acquire land has been served upon any person, the Authority may decline to proceed with the acquisition of the subject land.

(3) If the Authority decides not to proceed with the acquisition of land, it must give notice of the decision to the same persons and in the same way as the notice of intention to acquire (but notice need not be given to a person who no longer holds an interest in the land).

(4) If the Authority does not acquire land within 12 months after notice of intention to acquire the land was given, or within a longer period agreed between the Authority and the interested parties or decided by the Court, it will be presumed that the Authority has decided not to proceed with the acquisition and the land cannot then be acquired by the Authority unless a further notice of intention to acquire the land is given.

(5) If the Authority decides, or is presumed to have decided, not to proceed with the acquisition of land, a person interested in the land may, within three months after notice of the decision is given, or the decision is presumed to have been made, by written notice to the Authority, claim compensation.

(6) If, three months after notice is given under subsection (5), the Authority and the claimant are not agreed on whether the claimant is entitled to compensation, or the amount of the compensation, either party may refer the matter to the Court for determination.

(7) On reference of a matter under subsection (6), the Court may determine whether the claimant has an interest in the subject land and, if so, the amount of compensation that should be paid for—

- (a) disturbance to the use or enjoyment of the land resulting from the proposed acquisition; and
- (b) costs and expenses reasonably incurred by the claimant in consequence of the proposed acquisition.

Notice of acquisition

16. (1) When three months have elapsed, but 12 months have not yet elapsed, from the last occasion on which notice of intention to acquire was given to a person, the Authority may publish a notice of acquisition in the *Gazette*.

(1a) If the notice of acquisition relates to native title land, the notice of acquisition must contain an explanation of what may happen if no claim for compensation is made by a person claiming native title in the land within two months after the date of publication of the notice of acquisition.¹

(2) On publication of the notice of acquisition—

- (a) the land vests in the Authority to the extent of the interest specified in the notice; and

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- (b) a mortgage, charge, encumbrance, trust or other interest affecting the land (except native title) is, to the extent it affects the land subject to the acquisition, discharged; and
- (c) if a residual interest remains after the acquisition, the interest is modified to the extent required by the acquisition.

(3) The land acquired under this section may be an easement, right, power, or privilege that did not previously exist as such in, under, over, or in connection with, land.

(3a) The acquisition of land under this section does not, in itself, extinguish native title in the land but—

- (a) if the purpose of the acquisition is stated in the notice of acquisition and that purpose is inconsistent with the continued existence of native title in the land, native title is extinguished when the Authority begins to put that purpose into effect; and
- (b) in other cases, native title is extinguished when the Authority exercises rights obtained by the acquisition of the land in a way that is inconsistent with the continued existence of native title.²

(3b) If a notice of acquisition states the purpose of the acquisition and that the stated purpose is inconsistent with the continued existence of native title in the land, it will be presumed, in the absence of proof to the contrary that the purpose of acquisition is as stated in the notice and that the implementation of that purpose is inconsistent with the continued existence of native title in the land.

(4) A notice of acquisition must define the subject land as accurately as is reasonably practicable.

(5) The Authority must give notice of the acquisition—

- (a) to the same persons and in the same way as the notice of intention to acquire the land (but notice need not be given to a person who no longer holds an interest in the land); and
- (b) by publication of the notice of acquisition in a newspaper circulating generally throughout the State.

(6) If the acquisition may result in the extinguishment of the native title of persons who have not yet been registered under the law of the Commonwealth or the State as holders of, or claimants to, native title in land, general notice of the acquisition must be given to all persons who hold or may hold native title in the land³ and the notice must include a statement of the special rights of native title holders to claim compensation under this Act.

¹. See section 23D.

². See sections 23(3) and 238 of the *Native Title Act 1993* (Cwth).

³. For method of service see Part 5 *Native Title (South Australia) Act 1994*.

Modification of instruments of title

17. (1) The Authority shall forthwith after publication of a notice of acquisition cause a copy of the notice to be served on the Registrar and the Registrar shall withdraw any caveat entered pursuant to this Act and cause such alterations to, or endorsements upon, any instrument of title to the land in his possession or power (whether or not the land has been brought under the provisions of the *Real Property Act 1886-1969*) to be made as may be required in consequence of the acquisition of the land.

(2) If a notice of acquisition of native title land is published, the Authority must give a copy of the notice of acquisition to any authority that maintains a register of native title under the law of the State or the Commonwealth.

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**PART 4
NEGOTIATION AND COMPENSATION**

**DIVISION 1—ACQUISITION OF NATIVE TITLE LAND
FOR PRIVATE PURPOSE**

Application of Division

18. This Division applies if an Authority proposes to acquire native title land for the purpose of conferring proprietary rights or interests on a person other than the Crown or an instrumentality of the Crown.

Negotiation about acquisition of native title land

19. (1) The Authority must, before publishing a notice of acquisition of the land, negotiate in good faith with the native title parties in an attempt to reach agreement about the acquisition of the land.

Explanatory note—

The **native title parties** are the persons who are, at the end of the period of two months from when notice is given under section 10(2), registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. The negotiations are to be conducted with the registered representatives of those persons.

(2) However, negotiation is not required under subsection (1) if, at the end of two months from when notice of intention to acquire the land is first given to persons who hold or may hold native title in the land, there are no native title parties.

(3) If any of the negotiating parties requests the ERD Court to do so, the Court must mediate among the parties to assist in obtaining their agreement.

Application for determination if no agreement

20. (1) If agreement is not reached between the Authority and the native title parties within six months after notice of intention to acquire the land is given, any party may apply to the ERD Court for a resolution of the matter.

(2) On an application under this section, the ERD Court may determine whether the Authority may acquire the land and, if so, the conditions on which the acquisition is to proceed (but compensation is not to be determined at this stage).¹

(3) The ERD Court must make its determination on an application under this section within six months from when the application is made unless there are special reasons why it cannot do so.

¹ Compensation is determined under Division 2 of Part 4.

Criteria for making determination

21. (1) In making its determination, the ERD Court must take into account the following:

(a) the effect of the proposed acquisition, and any proposed or expected development of the land after its acquisition, on—

(i) native title in the land; and

(ii) the way of life, culture and traditions of any of the native title parties; and

(iii) the development of the social, cultural and economic structures of any of those parties; and

- (iv) the freedom of access by any of those parties to the land concerned and their freedom to carry out rites, ceremonies or other activities of cultural significance on the land in accordance with their traditions; and
 - (v) any area or site, on the land concerned, of particular significance to the native title parties in accordance with their traditions; and
 - (vi) the natural environment of the land concerned;
- (b) any assessment of the effect of the proposed acquisition, or any proposed or expected development of the land after its acquisition, on the natural environment of the land concerned—
- (i) made by a court or tribunal; or
 - (ii) made, or commissioned, by the Crown in any capacity or by a statutory authority;
- (c) the interests, proposals, opinions or wishes of the native title parties in relation to the management, use or control of the land concerned;
- (d) the economic or other significance of the proposed acquisition, or any proposed or expected development of the land after its acquisition, to Australia and to the State;
- (e) any public interest in the acquisition, or any proposed or expected development of the land after its acquisition, proceeding;
- (f) any other matter the ERD Court considers relevant.

(2) This section does not affect the operation of another law of the State or the Commonwealth for the preservation or protection of areas or sites of particular significance to Aboriginal people.

Overruling of determinations

22. (1) If the Minister considers it to be in the interests of the State to overrule a determination of the ERD Court under this Division, the Minister may, by notice in writing given to the ERD Court and the parties to the proceedings before the Court, overrule the determination and substitute another determination that might have been made by the Court.

(2) The Minister cannot overrule a determination if more than two months have elapsed from the date of the determination.

DIVISION 2—COMPENSATION

Negotiation of compensation

23. (1) The Authority must negotiate in good faith with interested persons about the compensation payable for the acquisition of land under this Act.

(2) The interested persons are the persons who have or had, or claim to have or to have had, an interest in the subject land that is divested or diminished by the acquisition or the enjoyment of which is adversely affected by the acquisition.

(3) If a party to the negotiations holds or held, or claims to hold or to have held, native title in the land, and either the party or the Authority requests the ERD Court to do so, the Court must mediate between the parties to assist in obtaining their agreement on the matters at issue between them.

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(4) The Authority may offer, and must consider any request made by a party to the negotiations for, non-monetary compensation.¹

¹ *Example*—The non-monetary compensation might take the form of a transfer of land, the provision of goods or services, or the carrying out of work for the re-instatement or improvement of land remaining in the claimant's ownership after the acquisition.

Offer of compensation and payment into court

23A. (1) When the Authority gives notice of the acquisition of land, it must make an offer to the person or persons whom it believes to be entitled to compensation for the acquisition, stating the amount of compensation the Authority is prepared to pay.

(2) The offer must (where appropriate) differentiate between, and quantify, the component of compensation representing the value of the acquired land and the component referable to disturbance or other compensable matters.

(3) The Authority must, within seven days after making an offer of compensation, pay the amount offered into the Court.

(4) Until compensation paid into Court under this section is applied by order of the Court, the money must be invested by the proper officer of the Court in an authorised trustee investment (bearing interest that compounds at intervals of one month or less) and the interest and other accretions accruing on the investment—

(a) must be paid to—

- (i) the person who would, but for the acquisition of the land, have been entitled to the rents and profits of the land; or
- (ii) a body constituted under the law of the State or the Commonwealth as trustee for the claimants to whom the compensation is offered; or

(b) must be dealt with in some other manner specified by the Court.

Agreement

23B. (1) If agreement is reached between the negotiating parties, the Authority must file a copy of the agreement in the Court.

(2) If the Authority makes an offer of compensation to a claimant and the claimant does not, by notice to the Authority, dispute the adequacy of the offer, the claimant is taken to have agreed to accept the offer in full satisfaction of the claim.

Reference of matters into court

23C. (1) If agreement between the Authority and a claimant on the question whether the claimant has or had an interest in the subject land, or on the amount of compensation, is not reached within two months, the Authority or the claimant may refer the question into Court.

(2) On the reference of a matter to the Court, the Court may make the orders necessary to resolve the matters at issue between the parties.

(3) In particular—

- (a) if there is a dispute about whether the claimant is interested in the subject land, or the nature of the claimant's interest—the Court may declare whether the claimant has an interest in the subject land and, if so, the nature of the interest; and

- (b) the Court may make orders for compensation that the Court finds to be justified on the claim; and
- (c) the Court may make other orders that may be just in the circumstances of the case.

Resolution of question of native title compensation in certain cases

23D. (1) If native title land is acquired under this Act, and at the end of a period of two months from publication of the notice of acquisition in the *Gazette*, the Authority has not been notified of a claim for compensation from any person claiming native title in the land, the Authority may apply to the Court for an order under this section.

(2) On an application under this section, the Court may—

- (a) declare that the land was not, at the time of acquisition, subject to native title; or
- (b) fix the amount of compensation payable for acquisition of the land and order that the compensation be held in trust—
 - (i) to be paid, as directed by the Court, to persons who, within six years after the date of the order, establish to the Court's satisfaction that they held native title in the subject land immediately before its acquisition; or
 - (ii) if no claim to the compensation is established within that period—to be repaid to the Authority.

Entry into possession

24. (1) Where an interest in possession in land is vested in the Authority pursuant to this Act, the Authority must diligently endeavour to obtain agreement as to the terms on which it will enter into possession of the subject land.

(2) If at the expiration of three months after the publication in the *Gazette* of the notice of acquisition, the Authority has failed to obtain agreement upon entry into possession of the subject land, it may apply to the Court for—

- (a) an order that any person be ejected from the subject land; and
- (b) such further orders as may be just in the circumstances,

and the Court may make any such order.

(3) The period of three months referred to in subsection (2) of this section may be extended by agreement of the parties, or by order of the Court.

(4) The Court may, on the application of the Authority, order that any person in possession of land after the expiration of three months from the day on which a notice of acquisition in relation to the land was published in the *Gazette*, shall pay rent to the Court at a rate fixed by the Court.

(5) A person who remains in possession of land acquired under this Act after the expiration of three months from the day on which a notice of acquisition in relation to the land was published in the *Gazette* shall be deemed to be in possession in pursuance of a tenancy determinable at will by the Authority and subject to such terms and conditions as may be prescribed.

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Principles of compensation

25. (1) The compensation payable under this Act in respect of the acquisition of land shall be determined according to the following principles:—

- (a) the compensation payable to a claimant shall be such as adequately to compensate him for any loss that he has suffered by reason of the acquisition of the land; and
- (b) in assessing the amount referred to in paragraph (a) of this section consideration may be given to—
 - (i) the actual value of the subject land; and
 - (ii) the loss occasioned by reason of severance, disturbance or injurious affection; and
- (c) compensation shall be fixed as at the date of acquisition of the land; and
- (d) where the claimant's interest in the subject land was liable to expire or be determined, any reasonable prospect of renewal or continuation of the interest must be taken into account; and
- (e) any special suitability or adaptability of the land for any purpose shall not be taken into account if it could be applied to that purpose in pursuance only of statute, or if the suitability or adaptability is peculiar to the purposes or requirements of a particular person or of any Governmental or local governing authority but any *bona fide* offer to acquire the land made before the passing of the special Act shall be taken into account; and
- (f) where the value of the land is enhanced by reason of its use, or the use of any premises on the land, in a manner that may be restrained by any court, or is contrary to law, or is detrimental to the health of any persons, the amount of that enhancement shall not be taken into account; and
- (g) no allowance shall be made on account of the fact that the acquisition is effected without the consent, or against the will, of any person; and
- (h) no allowance shall be made for any enhancement or diminution in the value of the land in consequence of—
 - (a) the passing of the special Act; or
 - (b) the acquisition under this Act of any other land; or
 - (c) any proposed or expected development of the land after its acquisition; and
- (i) where the land is, and but for acquisition would continue to be, devoted to a particular purpose, and there is no general demand or market for land devoted to that purpose, the compensation may, if reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement; and
- (j) allowance shall be made in favour of the Authority for any enhancement in value of land adjoining the subject land in which the claimant is interested by reason of development of the land after its acquisition, but in no case shall the claimant be liable to make any payment to the Authority in respect of such enhancement in value; and

- (k) where a notice of intention to acquire land has been served upon a person interested in the land, any sales, transactions, arrangements, licences or approvals effected or obtained with respect to the land, and any improvements to the land effected, after service of the notice, shall not be taken into account unless it is proved that they were effected or obtained *bona fide*.

(2) If native title land is acquired from native title holders, the native title holders must be compensated for the loss, diminution, impairment or other effect on the native title of the acquisition or the consequent use of the land for the purpose for which it was acquired.¹

¹ Compare section 51(1) of the *Native Title Act 1993* (Cwth).

Application of compensation

26. The Court may by order direct that any moneys paid into Court, or compensation ordered, under this Act be applied—

- (a) in the purchase, redemption or discharge of any tax, debt, mortgage or encumbrance affecting the subject land; or
- (b) in the purchase of other land or securities to be conveyed or settled upon or towards the same uses, trusts or purposes as the subject land; or
- (c) in removing or replacing any buildings or substituting others in their stead, in such manner as the Court may direct; or
- (d) in payment to any persons absolutely entitled to the moneys, or in the case of incapacity or disability to their trustees or guardians; or
- (e) in such other manner as the Court thinks fit.

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**PART 4A
RE-HOUSING COMMITTEE**

Establishment of Committee

26A. (1) There shall be for the purposes of this Act a Committee entitled the "Re-Housing Committee".

- (2) The Committee consists of five members appointed by the Governor of whom—
- (a) one (the chairperson) must be a person nominated by the Minister for Family and Community Services; and
 - (b) one must be a person with expertise in Aboriginal housing nominated by the Minister for Aboriginal Affairs; and
 - (c) one must be a person nominated by the Treasurer; and
 - (d) one must be a person nominated by the Minister for Transport; and
 - (e) one must be a person nominated by the Minister for the Environment and Natural Resources.

Conditions on which members hold office

26B. (1) Subject to this Act, a member of the Committee shall hold office for a term, not exceeding five years, fixed in the instrument of his appointment, and shall at the expiration of that term be eligible for re-appointment.

- (2) The office of a member of the Committee shall be vacated if—
- (a) the member dies or resigns, or his term of office expires; or
 - (b) the person or body by whom he was nominated revokes the nomination; or
 - (c) he is removed from office by the Governor.

(3) The Governor may remove a member of the Committee from office for any reason that he considers sufficient.

(4) The Governor may, subject to this Part, make such appointments as may be necessary to fill any vacancy occurring in the membership of the Committee.

Remuneration, etc.

26C. The members of the Committee shall be entitled to receive such remuneration, allowances and expenses as may be determined by the Governor.

Procedure at meetings

26D. (1) The chairman shall preside at any meeting of the Committee at which he is present.

(2) If the chairman is not present for any reason at a meeting of the Committee, the members present may elect one of their number to be chairman at that meeting.

(3) At any meeting of the Committee, three members shall constitute a quorum.

(4) Any decision of the Committee must be supported by the votes of at least three members of the Committee.

(5) In the event of an equality of votes upon any matter, consideration of the matter shall be deferred until the next meeting of the Committee.

Saving provision

26E. (1) No act or proceeding of the Committee shall be invalid or illegal by reason only of a vacancy in the office of a member of the Committee.

(2) Every act or proceeding of the Committee shall, notwithstanding any defect in the appointment of a member or purported member of the Committee, be as valid and effectual as if that member, or purported member, had been validly and effectually appointed.

Officers and employees

26F. (1) The Governor may, subject to, and in accordance with, the *Public Service Act 1967*, as amended, appoint a secretary to the Committee, and such other officers and servants as the Governor thinks fit.

(2) The Committee may make use of the services—

- (a) of any officer of a department of the Public Service of the State with the consent of the Minister administering that department; or
- (b) of any officer or employee of the South Australian Housing Trust with the consent of the Trust.

Application to Committee

26G. (1) If land constituting or including a place of residence is, or is to be, acquired under this Act, this section applies to the acquisition of the land.

(2) A person who, when the notice of intention to acquire the land was given, genuinely used the land as a place of residence is entitled to make an application for assistance under this section before, or within three months after, the acquisition of the land.

(3) An application under this section must be made in writing and in a form determined by the Committee and must set out in detail—

- (a) the grounds upon which assistance is sought from the Committee; and
- (b) the nature and extent of the assistance that the applicant seeks from the Committee.

(4) The Committee may, after consideration of an application under this section and after making such inquiries and obtaining such reports as it considers necessary—

- (a) make arrangements with any department or instrumentality of the Government of the State, or with any other person or body of persons, by means of which the applicant will be re-housed in a satisfactory social environment or any other social problems arising from the acquisition will be overcome or ameliorated; or
- (b) recommend to the Authority that a grant of moneys, or other financial assistance, be given to the applicant for the purpose of enabling him to obtain accommodation in a satisfactory social environment or for the purpose of overcoming or ameliorating any other social problems arising from the acquisition.

(5) An arrangement requiring the expenditure of moneys or a recommendation for a grant of moneys, or other financial assistance shall not be made under subsection (4) of this section unless the proposed arrangement or recommendation has been submitted to, and approved by, the Treasurer.

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(6) The Committee may rescind any arrangement or recommendation under this section if the Authority does not proceed with the acquisition in respect of which assistance was sought under this section.

(7) The Authority shall be liable for the payment of any amount required to implement, or give effect to, an arrangement or recommendation approved under subsection (5) of this section.

PART 5
POWERS OF ENTRY AND TEMPORARY OCCUPATION

Powers of entry

27. (1) For the purposes of this Act, or the special Act, the Authority or any person authorised in writing by the Authority, may—

- (a) enter and remain upon any land with any assistants, vehicles, machinery or equipment; and
- (b) affix or establish any trigonometrical stations, survey pegs, marks or poles and from time to time alter, remove, re-instate, or remove them; and
- (c) dig or bore into the land.

(2) Before the Authority enters land under subsection (1), the Authority must—

- (a) in the case of native title land—give notice as required by this Part and comply with any other applicable requirements of this Part;¹ or
- (b) in any other case—give the occupier, or if there is no occupier, the owner, at least seven days' notice of the entry and the nature of the work to be carried out on the land.

(3) A person who—

- (a) wilfully and without authorisation from the Authority, interferes with any trigonometrical stations, survey pegs, marks or poles; or
- (b) wilfully obstructs any person acting in accordance with this section,

shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

¹ See section 28A.

Temporary occupation

28. (1) The Authority may temporarily occupy and use any land to which this section applies for purposes authorised by an Act and may—

- (a) take therefrom any stone, gravel, earth or other material; or
- (b) deposit any material on the land; or
- (c) make cuttings or excavations on the land; or
- (d) make and use roads on the land; or
- (e) manufacture on the land any materials required for those purposes; or
- (f) erect workshops, sheds and buildings of a temporary character on the land.

(2) Before the Authority enters into temporary occupation of land under subsection (1), the Authority must—

- (a) in the case of native title land—give notice as required by this Part and comply with any other applicable requirements of this Part;¹ or

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(b) in any other case—give the occupier, or if there is no occupier, the owner, at least seven days' notice of the entry and the nature of the work to be carried out on the land.

(3) A person interested in the land may apply to the Court for an order that the Authority acquire his interest in the land.

(4) The Court, if it is satisfied that it is just to do so may order the Authority to acquire the interest upon such terms and conditions as may be determined by the Court, and may make such incidental or consequential orders as the Court thinks fit.

(5) The land to which this section applies is land that is—

(a) within 500 metres of the boundaries of land acquired under this Act; and

(b) is not a garden, orchard or plantation attached or belonging to a house, or a park, planted walk, avenue or ground ornamentally planted; and

(c) is not within 500 metres of a place genuinely used as a place of residence.

¹ See section 28A.

Exercise of powers under this Part in relation to native title land

28A. (1) Before the Authority, or a person authorised by the Authority, enters native title land to exercise a power conferred by this Part, the Authority must give written notice of the intended entry and the nature of the work to be carried out on the land to all who hold or may hold native title in the land.¹

(2) The notice must be given—

(a) if the intended exercise of powers involves the removal of minerals from the land, or substantial interference with the land or its use or enjoyment—at least two months before entry;

(b) in other cases—at least seven days before entry.

(3) If the intended exercise of powers will involve the removal of minerals from the land, or substantial interference with the land or its use or enjoyment, the Authority must negotiate in good faith with the native title parties in an attempt to reach agreement on the conditions on which the Authority may enter and use the land.

Explanatory note—

The **native title parties** are the persons who are, at the end of the period of two months from when notice is given under subsection (1), registered under the law of the State or the Commonwealth as holders of, or claimants to, native title in the land. The negotiations are to be conducted with the registered representatives of those persons.

(4) However, negotiation is not required under subsection (3) if, at the end of two months from when notice is given under subsection (1), there are no native title parties.

(5) If any of the negotiating parties requests the ERD Court to do so, the Court must mediate among the parties to assist in obtaining their agreement.

(6) If agreement is not reached between the Authority and the native title parties within six months after notice is given under subsection (1), either party may apply to the ERD Court for a resolution of the matters in dispute.

(7) On an application under this section, the ERD Court may decide whether the Authority may enter the land and, if so, determine the conditions on which the Authority may enter the land and exercise powers conferred by this Part.

(8) A determination under subsection (7) is enforceable in the same way as an agreement.

¹ For method of service see Part 5 *Native Title (South Australia) Act 1994*.

Compensation for entry or temporary occupation

29. (1) A person interested in land that is entered or temporarily occupied pursuant to this Part may, at any time before the expiration of three months from the day on which the Authority, or any person authorised by the Authority, was last in occupation of, or upon, the land, by notice in writing served upon the Authority, claim compensation.

(2) If after the expiration of three months from the day on which a notice was served under subsection (1) of this section, the Authority and the claimant are not agreed upon the amount of compensation that should be paid, either the Authority or the claimant may refer the matter to the Court for determination.

(3) The Court shall, upon the reference of any such matter, determine the amount of compensation that should be paid by the Authority, and order the payment of that amount to the claimant.

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**PART 6
MISCELLANEOUS**

Powers of inspection

30. (1) The Authority may, by notice in writing served upon any person, require him to deliver up for the inspection of the Authority, any specified document in his possession or power evidencing the interest of any person in land required for purposes authorised by an Act or any other specified record, account, or document in his possession or power relating to any such land.

(2) A person who fails to comply with a notice served under subsection (1) of this section within the time specified in the notice shall be guilty of an offence and liable to a penalty not exceeding two hundred dollars.

Giving of notice and other documents

31. (1) A notice or other document is validly given to, or served on, a person under this Act if—

- (a) served personally or by post on the person; or
- (b) if the identity or whereabouts of the person is not known to the Authority—
 - (i) by publication of the contents of the notice or document in a newspaper circulating generally throughout the State; or
 - (ii) by affixing the notice or document in a prominent position on the land to which it relates.¹

* * * * *

(3) A notice or other document may be served upon the Authority by sending it by post to the Authority at its office, or to the office of such person as the Authority may authorise to receive the notice or document on its behalf.

¹ For method of service on persons who hold or may hold native title in land see Part 5 *Native Title (South Australia) Act 1994*.

Persons of limited juristic capacity

32. (1) Where the juristic capacity of a claimant (not being a body corporate) is limited in any way, any amount of compensation payable in respect of land in which he was interested must be approved by the Court.

(2) If an amount of compensation is not approved as required by subsection (1) of this section, an application may, notwithstanding any other provision of this Act, be made at any time to the Court by or on behalf of the claimant, and the Court may order the Authority to pay further compensation to the claimant.

Interest

33. Where the Authority agrees with a claimant or is ordered to pay a greater amount of compensation than the amount paid into Court in respect of the acquisition of any land, the Authority must also pay the additional sum that would have accrued (whether as interest or otherwise) had the amount agreed or ordered been paid into Court instead.

* * * * *

Authority may dispose of surplus land

35. The Authority may sell, lease, or otherwise deal with or dispose of any land acquired pursuant to this Act that it does not require for purposes authorised by an Act.

Costs

36. In any proceedings under this Act the Court may award such costs as it thinks proper, but, in making an order for costs, shall, where it is, in the opinion of the Court, appropriate to do so, take into consideration—

- (a) the amount of compensation awarded by the Court as compared with the amount (if any) offered by the Authority; and
- (b) the extent to which, in the opinion of the Court, the proceedings have arisen from, or been affected by—
 - (i) unreasonable conduct on the part of the claimant or the Authority; or
 - (ii) an excessive claim by the claimant or unduly depressed offer by the Authority.

Summary of procedure

37. Proceedings for offences against this Act shall be disposed of summarily.

Regulations

38. The Governor may make such regulations as are contemplated by this Act, or as he deems necessary or expedient for the purposes of this Act, and, without limiting the generality of the foregoing, those regulations may—

- (a) prescribe the form of any notice or document for the purposes of this Act; and
- (b) prescribe any rate of interest or rate of rental for the purposes of this Act; and
- (c) prescribe the terms and conditions of any tenancy at will under section 24 of this Act; and
- (d) provide for a penalty, not exceeding one hundred dollars, recoverable summarily, for breach of, or non-compliance with, any regulation.

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APPENDIX**LEGISLATIVE HISTORY**

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 462.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Long title:	substituted by 87, 1994, s. 3
Section 3:	substituted by 87, 1994, s. 4
Sections 4 and 5:	repealed by 87, 1994, s. 4
Section 6:	redesignated as s. 6(1) by 87, 1994, s. 5(f) definition of "authorised undertaking" repealed by 87, 1994, s. 5(a) definition of "Authority" inserted by 87, 1994, s. 5(a) definition of "Court" inserted by 87, 1994, s. 5(b) definition of "ERD Court" inserted by 87, 1994, s. 5(b) definition of "interest" substituted by 87, 1994, s. 5(c) definition of "native title, "native title holder" and "native title land" inserted by 87, 1994, s. 5(d) definition of "Registrar" inserted by 87, 1995, s. 5(d) definition of "registered representative" inserted by 87, 1994, s. 5(d) definition of "special Act" inserted by 87, 1994, s. 5(d) definitions of "the Authority", "the Court", "the Registrar", "the special Act" and "undertaking" repealed by 87, 1994, s. 5(e)
Section 6(2):	inserted by 87, 1994, s. 5(f)
Section 7(1):	amended by 87, 1994, s. 6(a)
Section 7(1a):	inserted by 87, 1994, s. 6(b)
Section 7(2):	amended by 87, 1994, s. 6(c)
Section 10(1) and (2):	substituted by 87, 1994, s. 7(a)
Section 10(4):	substituted by 87, 1994, s. 7(b)
Section 10(5):	inserted by 87, 1994, s. 7(b)
Section 11:	substituted by 87, 1994, s. 8
Section 12:	substituted by 87, 1994, s. 9
Section 12(3):	amended by 5, 1997, s. 3
Section 12A:	inserted by 5, 1997, s. 4
Section 15(3) - (7):	substituted by 87, 1994, s. 10
Section 16(1):	substituted by 87, 1994, s. 11(a)
Section 16(1a):	inserted by 87, 1994, s. 11(a)
Section 16(2):	substituted by 87, 1994, s. 11(a)
Section 16(3a) and (3b):	inserted by 87, 1994, s. 11(b)
Section 16(5):	substituted by 87, 1994, s. 11(c)
Section 16(6):	inserted by 87, 1994, s. 11(c)
Section 17:	redesignated as s. 17(1) by 87, 1994, s. 12
Section 17(2):	inserted by 87, 1994, s. 12
Part 4 heading:	substituted by 87, 1994, s. 13
Part 4 Division 1 heading:	inserted by 87, 1994, s. 14
Sections 18 and 19:	substituted by 87, 1994, s. 14
Section 20:	amended by 71, 1990, s. 3; substituted by 87, 1994, s. 14
Sections 21 and 22:	substituted by 87, 1994, s. 14
Part 4 Division 2 heading:	inserted by 87, 1994, s. 14
Section 23:	substituted by 87, 1994, s. 14
Sections 23A - 23D:	inserted by 87, 1994, s. 14
Section 25:	amended and redesignated as s. 25(1) by 87, 1994, s. 15
Section 25(2):	inserted by 87, 1994, s. 15(c)
Section 26A(2):	substituted by 87, 1994, s. 16

Section 26G(1) and (2):	substituted by 87, 1994, s. 17
Section 27(2):	substituted by 87, 1994, s. 18
Section 28(1):	amended by 87, 1994, s. 19(a), (b)
Section 28(2):	substituted by 87, 1994, s. 19(c)
Section 28(5):	amended by 87, 1994, s. 19(d), (e)
Section 28A:	inserted by 87, 1994, s. 20
Section 30(1):	amended by 87, 1994, s. 21
Section 31(1):	substituted by 87, 1994, s. 22
Section 31(2):	repealed by 87, 1994, s. 22
Section 33:	substituted by 71, 1990, s. 4
Section 34:	repealed by 87, 1994, s. 23
Section 35:	amended by 87, 1994, s. 24